

REMARKS

Claims 1 and 3-23 are pending in this Application. Claims 1 and 3-23 were rejected. Claims 14-15 were indicated by the Examiner to be allowable in the office action dated July 1, 2004. Additionally, Claims 2-5 were objected to by the examiner as being dependent upon a rejected base claim but were indicated by the Examiner to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims in the July 1, 2004 office action. The Examiner has now withdrawn the allowances. The Examiner has objected to claim 13 as being improperly dependent upon claim 11. The Applicant thanks the Examiner for the observation and has amended claim 13 to properly depend from claim 12. The Applicant has also amended claim 14 to correct a minor grammatical error. No new matter has been added.

The Examiner is respectfully requested to reconsider the rejection of this Application in light of the foregoing remarks.

35 U.S.C. §102

The Examiner rejected claims 1, 4, 6-7, 12, 16-17 and 22 under 35 U.S.C. §102(b) as being anticipated by Pullman (5,333,885).

In making the rejection, the Examiner stated:

Pullman in figures 1-5, discloses a combination apparatus, which converts from a dolly to a cart comprising a box for hauling a load. The box includes a bottom portion (13) having four sides, and at least three side portions (11, 12, 14) disposed about at least three sides of the bottom portion and extending perpendicularly outward from the bottom portion. Pullman also discloses a detachable handle (23). The handle removably attached to the box in at least two positions such that handle is used in a first position as a dolly and in a second position as a cart. Pullman also discloses at least one wheel (16) attached to the box, at least one stabilizing foot (25) attached to the box and a gate portion or a shelf late (38) removably attached to the fourth side of the box and extending outward.

Regarding claims 6 and 16, Pullman discloses an axle (15), which is mounted on the underside of the box for mounting the at least one wheel.

Regarding claims 7 and 17, Pullman discloses the at least one wheel comprising two wheels mounted on the axle. The two wheels mounted on opposing sides of said box.

Regarding claims 12 and 22, Pullman discloses the detachable handle, which is an U-shaped handle portion and opposing parallel shafts.

The Pullman device discloses a fishing cart having a bottom, three sides, and two shelf units (18, 38). The handle is detachable on the Pullman device but only to facilitate storage of the device. There is no ability to operate the Pullman device in a horizontal position. A user would have to practically be lying on the ground in order to even attempt operating the Pullman device in the horizontal position. The first shelf unit (18) is a permanently fixed shelf disposed between the first and second sidewalls 11 and 12, respectively. As such, the Pullman

device could not operate as a dolly because the shelf 18 would interfere with any load placed on the device. For example, a refrigerator could not be placed on the Pullman device because the shelf 18 would interfere with its placement. The second shelf 38 is not "removably attached" to device. It is pivotally attached, but it is **not removably** attached.

For a 35 U.S.C. §102 rejection, it is well established caselaw that "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicant's independent claim 1 recites:

A combination apparatus which converts from a dolly to a cart comprising:

- a box for hauling a load, said box including a bottom portion having four sides, and at least three side portions disposed about at least three sides of the bottom portion and extending perpendicularly outward from the bottom portion;

- a detachable handle, said handle removably attached to the box in at least two positions such that **handle is used in a first position as a dolly and in a second position as a cart,**

- at least one wheel, attached to said box;

- at least one stabilizing foot attached to the box; and

- a **gate portion, removably attached** to the fourth side of said box and extending outward. (emphasis added)

which is not disclosed by the Pullman reference. The Pullman device does not disclose either a "handle..used in a first position as a dolly and in a second position as a cart" or a "gate portion, removably attached to the fourth side of

said box and extending outward” which are explicitly recited in the applicant’s independent claim 1. Accordingly, the Applicant’s independent claim 1 is patentably distinct from the Pullman device.

Applicant’s claims 6-7 and 12 depend either directly or indirectly from Applicant’s patentable independent claim 1 and are therefore patentable for at least the same reasons as Applicant’s patentable independent claim 1.

The Applicant’s independent Claim 4 recites:

A combination apparatus which converts from a dolly to a cart comprising:

a box for hauling a load, said box including a bottom portion having four sides, and at least three side portions disposed about at least three sides of the bottom portion and extending perpendicularly outward from the bottom portion;

a detachable handle, said **handle removably attached to the box in at least two positions such that handle is used in a first position as a dolly and in a second position as a cart,**

at least one wheel, attached to said box;

at least one stabilizing foot attached to the box; and

a gate portion removably attached to the detachable handle, extending away from the bottom portion of the box.

(emphasis added)

The Pullman device does not disclose a “handle removably attached to the box in at least two positions such that handle is used in a first position as a dolly and in a second position as a cart” or a “gate portion removably attached to the detachable handle” which is explicitly recited in Applicant’s independent claim 4. In fact, the handle in the Pullman device does not even attach to the second shelf plate (38) of the Pullman device. Therefore, Applicant’s independent claim 4 is patentably distinct from the Pullman device.

Applicant's claims 16-17 and 22 depend either directly or indirectly from Applicant's patentable independent claim 4 and are therefore patentable for at least the same reasons as Applicant's patentable independent claim 4.

35 U.S.C. §103

Claims 3 and 5

The Examiner rejected claims 3 and 5 under 35 U.S.C. §103(a) as being unpatentable over Pullman as applied to claims 1 and 4, and further in view of Gonzalez (5,159,777).

In making the rejection, the Examiner stated:

Pullman discloses the gate portion, but fails to show an accessory box.

Gonzalez in figure 1, teaches a fishing cart apparatus comprising an accessory box (3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination apparatus which converts from a dolly to a cart of Pullman with the addition of an accessory box as taught by Gonzalez in order to receive various components.

In order to establish a *prima facie* case of obviousness under 35 U.S.C. §103, the Examiner must demonstrate that there is a suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the references or combine the reference teachings. Furthermore, the prior art references must teach or suggest all of the claim features. It is well settled law that the prior art itself must provide the motivation for a proposed alteration of a reference. *Ex parte Chicago Rawhide Manufacturing Co.*, 220 U.S.P.Q. 351, (B.O.P.A. 1984). Moreover, the suggestion must be plain and clear or the rejection is untenable. *Fromson v. Offset Plate, Inc.*, 225 U.S.P.Q. 26, 32 (Fed. Cir. 1985); *Kimberly-Clark Corp. v. Johnson & Johnson*, 223 U.S.P.Q. 603, 610 (Fed. Cir. 1984). The Examiner is not free to pick bits and pieces from the prior art and, with the hindsight benefit of applicants' disclosure,

attempt to reconstruct the invention. *Orthopedic Equipment, Inc. v. U.S.*, 217 U.S.P.Q. 193, 199 (Fed. Cir. 1983).

As previously discussed, the Pullman reference does **not** disclose either a “handle..used in a first position as a dolly and in a second position as a cart” or a “gate portion, removably attached to the fourth side of said box and extending outward” which are explicitly recited in the applicant’s independent claim 1. Nor does the Pullman reference disclose a “handle removably attached to the box in at least two positions such that handle is used in a first position as a dolly and in a second position as a cart” or a “gate portion removably attached to the detachable handle” which is explicitly recited in Applicant’s independent claim 4.

Applicant’s claims 3 and 5 depend from Applicant’s patentable independent claims 1 and 4, respectively and are therefore patentable for at least the same reasons as Applicant’s patentable independent claims 1 and 4.

Additionally, Applicant’s dependent claims 3 and 5 recite a gate portion “wherein the gate portion further comprises an accessory box mounted on said gate portion” which is neither taught nor suggested by either the Pullman or Gonzalo references. Therefore, Applicant’s dependent claims 3 and 5 are patentably distinct from the Pullman and Gonzalez references, whether taken alone, or in combination with one another.

Claims 8 and 18

The Examiner rejected claims 8 and 18 under 35 U.S.C. §103(a) as being unpatentable over Pullman as applied to claims 1 and 4, and further in view of Chateauneuf et al. (4,570,961).

In making the rejection, the Examiner stated:

Pullman discloses the axle, but fails to show the axle located at a distance such that the outer perimeter of each wheel is flush with the front side of the box.

Chateauneuf et al. in figure 7, teach a cart comprising an axle and a wheel (67), which is located at a distance such that outer perimeter of each wheel is flush with the front side of a box. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination apparatus which converts from a dolly to a cart of Pullman with the addition of an accessory box as taught by Gonzalez in order to receive various components.

Again, neither the Pullman nor Chateneau et al. references disclose or suggest either a "handle..used in a first position as a dolly and in a second position as a cart" or a "gate portion, removably attached to the fourth side of said box and extending outward" which are explicitly recited in the applicant's independent claim 1. Nor does the Pullman reference disclose a "handle removably attached to the box in at least two positions such that handle is used in a first position as a dolly and in a second position as a cart" or a "gate portion removably attached to the detachable handle" which is explicitly recited in Applicant's independent claim 4.

Claims 8 and 18 depend from patentable independent claims 1 and 4, respectively, and are therefore patentable for at least the same reasons as

patentable independent claims 1 and 4 over the Pullman and Chateneau et al. references, whether taken alone or in combination with one another.

Claims 9 and 19

The Examiner rejected claims 9 and 19 under 35 U.S.C. §103(a) as being unpatentable over Pullman as applied to claims 7 and 17 and further in view of Hawkins (4,981,412).

In making the rejection, the Examiner stated:

Pullman discloses the axle, but fails to show a pedal mounted on the axle.

Hawkins in figure 1, teaches a hand truck comprising a pedal (62), which is connected to an axle midway between two wheels (56). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the handcart of Pullman with the addition of a pedal as taught by Hawkins in order to improve way of lifting the handcart.

Neither the Pullman nor Hawkins references disclose or suggest either a “handle..used in a first position as a dolly and in a second position as a cart” or a “gate portion, removably attached to the fourth side of said box and extending outward” which are explicitly recited in the applicant’s independent claim 1. Nor do the Pullman or Hawkins references disclose a “handle removably attached to the box in at least two positions such that handle is used in a first position as a dolly and in a second position as a cart” or a “gate portion removably attached to the detachable handle” which is explicitly recited in Applicant’s independent claim 4. There is no suggestion or motivation in either the Pullman or Hawkins

references that they could be combined to attain the Applicant's invention as recited in independent claims 1 or 4.

Claims 9 and 19 depend indirectly upon patentable independent claims 1 and 4, respectively, and are therefore patentable for at least the same reasons as patentable independent claims 1 and 4 over the Pullman and Hawkins references, whether taken alone or in combination with one another.

Claims 10-11 and 20-21

The Examiner rejected claims 10-11 and 20-21 under 35 U.S.C. §103(a) as being unpatentable over Pullman as applied to claims 1 and 4, and further in view of Mosley (5,915,706).

In making the rejection, the Examiner stated:

Pullman discloses the at least one stabilizing foot, but fails to show two U-shaped stabilizing feet.

Mosley in figure 1, teaches a wheelbarrow comprising two U-shaped stabilizing feet (14). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the handcart of Pullman with the addition of two U-shaped stabilizing feet as taught by Mosley in order to improve durability and load holding capability of the handcart.

Neither Pullman nor Mosley teach or suggest either a "handle..used in a first position as a dolly and in a second position as a cart" or a "gate portion, removably attached to the fourth side of said box and extending outward" which are explicitly recited in the applicant's independent claim 1. Nor do the Pullman or Mosley references disclose a "handle removably attached to the box in at least two positions such that handle is used in a first position as a dolly and in a

second position as a cart” or a “gate portion removably attached to the detachable handle” which is explicitly recited in Applicant’s independent claim 4. There is no suggestion or motivation in either the Pullman or Mosley references that they could be combined to attain the Applicant’s invention as recited in independent claims 1 or 4.

Claims 10-11 depend either directly or indirectly on patentable independent claim 1, and are patentable for at least the same reasons as patentable independent claim 1 over the Pullman and Mosley references either taken alone, or in combination with one another. Claims 20-22 depend either directly or indirectly on patentable independent claim 4, and are patentable for at least the same reasons as patentable independent claim 4 over the Pullman and Mosley references either taken alone, or in combination with one another.

Claims 13 and 23

The Examiner rejected claims 13 and 23 under 35 U.S.C. §103(a) as being unpatentable over Pullman as applied to claims 11 and 21, and further in view of McConnell et al. (5,464,183).

In making the rejection, the Examiner stated:

Pullman discloses the handle, but fails to show an accessory bar.

McConnell et al. in figure 1, teaches an accessory bar (10), which can be attached to a handle. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the handcart of Pullman with the addition of an accessory bar as taught by McConnell et al. in order to hold accessory items on the handcart.

Neither the Pullman nor the McConnell et al. references teach or suggest either a "handle..used in a first position as a dolly and in a second position as a cart" or a "gate portion, removably attached to the fourth side of said box and extending outward" which are explicitly recited in the applicant's independent claim 1. Nor do the Pullman or McConnell et al. references disclose a "handle removably attached to the box in at least two positions such that handle is used in a first position as a dolly and in a second position as a cart" or a "gate portion removably attached to the detachable handle" which is explicitly recited in Applicant's independent claim 4. There is no suggestion or motivation in either the Pullman or McConnell et al. references that they could be combined to attain the Applicant's invention as recited in independent claims 1 or 4.

Applicant's claims 13 and 23 depend indirectly on Applicant's patentable independent claims 1 and 4, respectively, and are therefore patentable for at least the same reasons as patentable independent claims 1 and 4 over the Pullman and McConnell et al. references, whether taken alone or in combination with one another.

Claims 14 and 15

The Examiner rejected claims 14 and 15 under 35 U.S.C. §103(a) as being unpatentable over Pullman in view of Gonzalez and Hawkins.

In making the rejection, the Examiner stated:

Pullman in figures 1-5, discloses a combination apparatus, which converts from a dolly to a cart comprising a box for hauling a load. The box includes a bottom portion (13) having four sides, and at least three side portions (11, 12, 14) disposed about at least

three sides of the bottom portion and extending perpendicularly outward from the bottom portion. Pullman also discloses a detachable handle (23). The handle removably attached to the box in at least two positions such that the handle is used in a first position as a dolly and in a second position as a cart. Pullman also discloses at least one wheel (16) attached to the box, at least one stabilizing foot (25) attached to the box and a gate portion or a shelf plate (38) removably attached to the fourth side of the box and extending outward.

Pullman discloses the axle, but fails to show an accessory box and a pedal mounted on the axle.

Gonzalez in figure 1, teaches a fishing cart apparatus comprising an accessory box (30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination apparatus which converts from a dolly to a cart of Pullman with the addition of an accessory box as taught by Gonzalez in order to receive various components.

Hawkins in figure 1, teaches a hand truck comprising a pedal (62), which is connected to an axle midway between two wheels (56). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the handcart of Pullman with the addition of a pedal as taught by Hawkins in order to improve the way of lifting the handcart.

None of the references, Pullman, Gonzalez, and/or Hawkins teach or suggest either a "detachable handle, said handle removably attached to the box such that the handle when placed in a first position is a dolly and is a cart when placed into second position" or a "a gate attached to the detachable handle, said gate including an accessory box " which are explicitly recited in the applicant's amended independent claim 14. Nor do the Pullman, Gonzalez and/or Hawkins references disclose a "a detachable handle, said handle removably attached to the box" or a "a gate attached to the box, said gate including an accessory box" which are explicitly recited in Applicant's independent claim 15. There is no suggestion or motivation in either the Pullman, Gonzalez and/or Hawkins references that they could be combined to attain the Applicant's invention as

recited in independent claims 14 or 15. Accordingly, Applicant's independent claims 14 and 15 are patentable over Pullman, Gonzalez, and Hawkins whether taken alone, or in any combination with one another.

CONCLUSION

In view of the foregoing amendment and remarks, it is believed that this Application is now in condition for allowance. Early and favorable reconsideration is respectfully solicited.

If the Examiner has any questions regarding the foregoing amendment and remarks, or if prosecution of this Application could be furthered by a telephone interview, the Examiner is requested to telephone the Applicant's undersigned attorney.

Respectfully submitted,

By: 
SCOTT J. FIELDS
Reg. No. 32,857

Date: 4/15/05

NATIONAL IP RIGHTS CENTER, LLC
550 TOWNSHIP LINE RD.
SUITE 400
BLUE BELL, PA 19422
(610)-680-2301